

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Establish
Consumer Rights and Consumer Protection Rules
Applicable to All Telecommunications Utilities.

Rulemaking 00-02-004
(Filed February 3, 2000)

**OPINION GRANTING INTERVENOR COMPENSATION
FOR SUBSTANTIAL CONTRIBUTIONS TO
DECISION 04-08-056 AND DECISION 04-10-013**

Summary

This decision grants \$9,145.89 in intervenor compensation to California Small Business Roundtable (CSBRT) for its contributions to Decision (D.) 04-08-056 and D.04-10-013.

Background

In May 2004, the Commission issued D.04-05-057 adopting General Order 168, Rules Governing Telecommunications Consumer Protection, applicable to all Commission-regulated telecommunications utilities. In December 2004, we issued D.04-12-054 awarding intervenor compensation to six parties¹ for their contributions to D.04-05-057, including \$15,961.98 to CSBRT.

¹ Utility Consumers' Action Network, The Utility Reform Network, Wireless Consumers Alliance, California Small Business Roundtable, Latino Issues Forum, and National Consumer Law Center, Inc.

At the time CSBRT filed that compensation claim, we had not yet issued decisions addressing several applications for rehearing and motions to stay D.04-05-057 in which CSBRT was participating, and CSBRT had therefore not yet reflected its hours and expenses associated with that effort. We subsequently issued two orders addressing those topics: D.04-08-056 denied the parties' motions to stay, and D.04-10-013 modified D.04-05-057 and denied the applications for rehearing. On November 12, 2004, CSBRT followed up with the supplemental compensation request we address today.

Requirements for Awards of Compensation

The intervenor compensation program enacted by the Legislature in Pub. Util. Code §§ 1801-1812² establishes a mechanism for reimbursing public utility customers for their reasonable costs of participation in Commission proceedings if they make a substantial contribution to the Commission's decision. All of these procedures must be followed and criteria satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including filing a sufficient notice of intent to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction; a representative who has been authorized by a customer; or a representative of a group or organization

² All statutory references are to the Public Utilities Code.

authorized to represent the interests of residential customers. (§ 1802(b).)

3. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
4. The intervenor should file and serve a request for a compensation award within 60 days of a final order or decision in a hearing or proceeding. (§ 1804(c).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(h), 1803(a).)
6. The claimed fees and costs must be comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

We evaluate CSBRT’s compliance with these criteria below.

Eligibility and Timeliness

CSBRT is a non-profit organization formed for, among other purposes, advocating on behalf of California’s small businesses and representing the interests of both small business and residential customers in all matters relating to utility services. As described in D.04-12-054 and the assigned Administrative Law Judge’s (ALJ) earlier ruling, CSBRT did file a timely notice of intent and was found to be a group or organization authorized to represent the interests of residential customers, and for which participation without compensation would cause significant financial hardship. CSBRT has met the first three criteria set forth above and is eligible to claim intervenor compensation in this proceeding.

CSBRT filed and served its supplemental claim on November 12, 2004, within 60 days of our D.04-10-013 (October 7, 2004). CSBRT's filing was timely. Under § 1804(c), the Commission staff or any other party may file a response to a claimant's request. No responses were filed.

Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer?³ Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision?⁴ As described in § 1802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁵

³ See § 1802(h).

⁴ See §§ 1802(h) and 1802.5.

⁵ D.98-04-059, 79 CPUC2d, 628 at 653.

With this guidance in mind, we turn to the claimed contributions CSBRT made to this stage of the proceeding.

CSBRT's supplemental intervenor compensation claim cites its contributions to our decision rejecting a stay and our decision denying rehearing in two primary areas: rebutting carriers' assertions that the definition of "small business" was unconstitutionally vague, arbitrary or capricious, and contradictory; and defending against industry claims that implementing the consumer protection rules would cause irreparable harm to carriers while staying D.04-05-057 would cause no harm to consumers. In addition, CSBRT points out once again that it was the primary participant at this stage of the proceeding, as in the earlier stages, advocating to extend consumer protections to small businesses.

Carriers charged that the definition of small business set forth in D.04-05-057 and new General Order 168 was impermissibly vague, arbitrary or capricious, and contradictory, and extended those charges to other definitions and points in the decision and general order as well. CSBRT rebutted their challenge to "small business" at length by citing applicable case law, discussion in the decision and evidence in the record to show the definition was well supported and met the required legal standard. In D.04-10-013, we rejected the carriers' contentions and retained the definition, citing a case precedent CSBRT had cited in its response. CSBRT also summarized the record's support establishing that, contrary to industry claims, delaying implementation of the consumer protection rules would harm small business and residential consumers. We rejected the carriers' claim of irreparable harm in D.04-08-056.

CSBRT was successful in achieving its goals in both of the areas it addressed in its response. CSBRT has made substantial contributions to the

Commission's decisions in this proceeding and should receive an award of compensation.

Reasonableness of Requested Compensation

The components of a claimant's request must constitute reasonable fees and costs of that claimant's preparation for and participation in the proceeding. Only those fees and costs associated with the claimant's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation. We first assess whether the hours and non-labor expenses CSBRT charged for its efforts that resulted in substantial contributions to the Commission's decisions are reasonable, and then we determine whether the compensation rates claimed are commensurate with market rates for similar services from comparably qualified persons.

CSBRT's supplemental claim is tabulated below. CSBRT submitted a daily time log to support its charges. For each day, it has logged the date, the number of hours, and the issue and/or activity in which its representative engaged. We have examined CSBRT's hours and expenses, and we agree they are reasonable in light of the content and depth of its filing and commensurate with its contributions. We note that CSBRT has properly reduced by one-half the time for preparing its compensation request, and has excluded from this claim its hours and expenses associated with interim awards already received in this proceeding. Likewise, its non-labor charges consist of only those expenses necessary to file and serve its response and supplemental intervenor compensation claim. We therefore find the amounts CSBRT claims reasonable.

CSBRT's Supplemental Claim

Name	Expertise	Year	Hours	Rate	Amount
Carl K. Oshiro	Attorney	2004	29.1	\$310	\$9,021.00
Copies					77.39
Postage					33.26
Fed Ex					14.24
Subtotal Expenses					124.89
Total Claim					\$9,145.89

CSBRT seeks \$310 per hour for attorney Carl K. Oshiro's work in 2004. This is the rate we previously found reasonable for Oshiro's 2004 work. We again find that rate reasonable for the reasons set forth in D.04-12-054, our earlier compensation decision in this proceeding.

CSBRT's Award

We award CSBRT \$9,145.89, the full amount of its supplemental claim, as summarized in the table below.

CSBRT's Award

Advocate	Year	Hours	Rate	Amount
Oshiro	2004	29.1	310	\$9,021.00
Expenses				124.89
Total Award				\$9,145.89

Consistent with previous Commission decisions, we order that interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15 be paid on the award amount, commencing the

75th day after CSBRT filed its supplemental compensation request and continuing until full payment is made.⁶

This is a quasi-legislative rulemaking proceeding affecting the entire regulated telecommunications industry. As such, we find it appropriate to authorize payment of the compensation award from the intervenor compensation program fund, as described in D.00-01-020. To obtain their awards, intervenors who have never received payment of an award from the Commission must provide their taxpayer identification number, and a completed STD 204 Payee Data Record form available at <http://www.documents.dgs.ca.gov/osp/pdf/std204.pdf>, to the address below. For assistance completing Section 1 of STD 204, call the phone number below.

California Public Utilities Commission
Attention: Fiscal Office
505 Van Ness Avenue, Room 3000
San Francisco, CA 94102
(415) 703-2306

We remind CSBRT that Commission staff may audit its records related to intervenor compensation awards and that it must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Those records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed.

⁶ CSBRT filed its supplemental request on November 12, 2004.

Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner in this proceeding and James McVicar is the assigned ALJ.

Findings of Fact

1. CSBRT filed a timely notice of intent and was found eligible to claim compensation in this proceeding.
2. CSBRT filed a timely supplemental claim for compensation.
3. CSBRT made substantial contributions to D.04-08-056 and D.04-10-013, as described herein.
4. The hourly rate CSBRT has requested for its attorney is reasonable when compared to the market rates for persons with similar training and experience.
5. The number of hours CSBRT has claimed for its attorney is reasonable.
6. The non-labor expense amounts CSBRT has claimed are reasonable.
7. The reasonable compensation for CSBRT's contributions to D. 04-08-056 and D.04-10-013 is \$9,145.89.

Conclusions of Law

1. CSBRT has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation as set forth herein for its costs incurred in making substantial contributions to D.04-08-056 and D.04-10-013.
2. This decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. California Small Business Roundtable (CSBRT) is awarded \$9,145.89 as compensation for its substantial contributions to Decision (D.) 04-08-056 and D.04-10-013.
2. CSBRT's award shall be paid within 30 days of the effective date of this decision from the intervenor compensation program fund described in D.00-01-020. Payment shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning on the 75th day after the filing date of CSBRT's supplemental request for compensation, and continuing until full payment is made. The request for compensation filing date to be used is November 12, 2004.
3. The comment period for this decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decision(s):	D0408056 and D0410013
Proceeding(s):	R0002004
Author:	ALJ McVicar
Payer(s):	Commission

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason for Change/Disallowance
California Small Business Roundtable	11/12/04	\$9,145.89	\$9,145.89	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Carl K.	Oshiro	Attorney	California Small Business Roundtable	\$310	2004	\$310

(END OF ATTACHMENT)